

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 05-10490 NMG

NANCY BUCKLEY,)
Plaintiff)
)
v.)
)
CITY OF BROCKTON)
SCHOOL DEPARTMENT,)
Defendant)
)

PLAINTIFF'S AND DEFENDANTS' PRETRIAL MEMORANDUM

1. IDENTIFICATION OF TRIAL COUNSEL

A. Plaintiff:

Kevin G. Powers, BBO # 405020
Rodgers, Powers & Schwartz LLP
18 Tremont Street
Boston, MA 02108
(617) 742-7010

B. Defendants:

Frank A. Smith III
Frank A. Smith III & Associates, P.C.
11 Beacon Street, Suite 1200
Boston, MA 02108

2. JURY TRIAL

This case will be tried before a jury.

3. SUMMARY OF POSITIONS

A. Plaintiff

Plaintiff is a female and holds a Master's Degree from Bridgewater State College in Health Education and has received 45 additional credits in administration from Bridgewater State College and Fitchburg State College. She holds Massachusetts certifications in (1) Teacher of Health Education (K-12); (2) Principal/Assistant Principal (9-12); and (3) Supervisor/Director (All).

From 2001 to the present, Plaintiff has worked as Assistant Housemaster of the Green Building – Brockton High School. She has been involved in all aspects of running the Green Building. Her responsibilities include managing all matters of discipline; supervising and evaluating staff; working with the headmaster and performing assigned duties; and performing the duties of the Housemaster in the Housemaster's absence. Plaintiff has worked very well with the students, their parents/guardians, and staff members, and she has received excellent evaluations, both written and oral.

On March 1, 2004, two (2) new Housemaster positions were posted by the Defendant. The job posting stated that the successful applicant should have (1) a Master's Degree with a strong background in administration; (2) appropriate certification from the Massachusetts Department of Education; and (3) five or more years of teaching and/or administrative experience, with a strong background in high school education preferred.

Plaintiff was highly qualified for the position of Housemaster. She submitted an application for the position to Kathleen Sirois, Director of Personnel.

It is admitted that during the selection process Principal Szachowicz told Superintendent Bage that Sharon Wolder was the number one choice of the interview team. In response Superintendent Bage responded by stating that Szachowicz should consider "a guy" for the other position of House Master.

The Defendant, through its supervisors and agents, Joseph Bage, Superintendent of Schools, and Susan Szachowicz, Principal of Brockton High School, failed to promote Plaintiff to the position of Housemaster, for which she was more qualified than Alan Jolly, who is a male, because of her gender and/or sex, female.

Defendant

In March 2004, the defendant, the City of Brockton (School System), posted a notice indicating that two housemaster positions were available at Brockton High School. The notice stated that the successful applicant should have (1) a master's degree with a strong background in administration, (2) appropriate certification from the Massachusetts Department of Education, and (3) five or more years of teaching and/or administrative experience, with a strong background in high school education preferred. Kathleen Sirois, the director of the Human Resources Department, arranged for the posting, collection of applications, initial screening, and nomination of an Advisory Committee to

complete the process. The job posting, applicant screening and interview process had been in place for many years and was strictly followed. The members of the housemaster Advisory Committee in 2004 were: Kathleen Sirois, Maria LeFort, Deirdre Smith, John Whiton, Deborah Feldman, Jean Malatesta and Susan Szachowicz.

Kathleen Sirois screened the applications and removed those who did not meet minimum requirements. She then scheduled the personal interviews on May 5, 2004. On that date, a number of individuals were interviewed and ranked by the Advisory Committee using worksheets provided by Ms. Sirois. One member of the Advisory Committee, Deborah Feldman, indicated on her worksheet that she did not recommend the plaintiff for the position. Another member, Jean Malatesta, did not provide any numerical ranking for the plaintiff as she was not one of her top choices. Private post-interview discussions were held that day. During those discussions, Deborah Feldman was not supportive of the plaintiff. John Whiton, the direct supervisor of the plaintiff, was supportive of the plaintiff. After the interview and post-interview discussions were complete, the Advisory Committee reduced the number of candidates to six finalists: the plaintiff, Alan Jolly, Sharon Wolder, Carrie Copp, Brett Dickens and Elizabeth Friedman. The highest rated of the remaining finalists were as follows: Sharon Wolder, Alan Jolly and the plaintiff. Ms. Sirois then sent Superintendent Bage a letter naming the finalists.

Superintendent Joseph Bage was responsible for notifying the school administrators when a final candidate was chosen, but he was not the decision-maker. Dr. Susan Szachowicz had the authority to choose the final candidate for a position available within Brockton High School. The Superintendent was not authorized to

appoint another individual in that person's place. If the Superintendent believed the individual chosen by the principal was unqualified, his only recourse was to restart the entire posting and application process.

Dr. Susan Szachowicz had a series of discussions with Superintendent Bage about the candidates. They agreed that Sharon Wolder deserved one of the two available positions. Superintendent Bage recommended Laura Miceli for the second position on more than one occasion. Dr. Szachowicz refused to appoint her for a number of reasons including a poor interview. Dr. Szachowicz then narrowed the field to Alan Jolly and the plaintiff. Alan Jolly and the plaintiff both met the minimum criteria described in the job posting notice distributed in March 2004. Alan Jolly had been employed by the Brockton Schools one year longer than the plaintiff, held a higher level of state certification and was a member of a statewide curriculum committee. The plaintiff had more years as a secondary school classroom teacher and was serving as an assistant housemaster.

Dr. Szachowicz had a difficult time choosing between them because she had established a personal relationship with the plaintiff over the years. They regularly attended a weekly card game that at one point was held in the plaintiff's home. Superintendent Bage advised her to have the candidates rescreened if she could not reach a decision. He also reminded her that "she had to live with her decision" meaning that she had to work with that person every day. Dr. Szachowicz decided not to rescreen and instead held second interviews with some of the candidates. She later chose Alan Jolly for the second position. Alan Jolly's technical knowledge was a factor in her decision.

The plaintiff filed her lawsuit against the City of Brockton School Department without first exhausting administrative remedies under the terms of her union contract.

4. STIPULATED FACTS

- A. Plaintiff is a female
- B. Plaintiff holds a Master's Degree and 45 additional credits in administration
- C. From 2001 until the selection of Alan Jolly as Housemaster the Plaintiff held the position of Assistant Housemaster of the Green Building
- D. In or about March 1, 2004 two Housemaster positions became available one of those was for the Green Building
- E. Plaintiff applied for the Housemaster positions that became available in or about March 1, 2004
- F. Plaintiff was qualified for the Housemaster position
- G. Plaintiff was not selected to fill either Housemaster positions
- H. The two Housemaster positions were filled by Sharon Wolder and Alan Jolly
- I. The Plaintiff does not contest the appointment of Sharon Wolder

5. CONTESTED ISSUES OF FACT

Was the failure to select Nancy Buckley to fill the position of Housemaster for the Green Building of Brockton High School because of her gender

6. JURISDICTIONAL QUESTIONS

None at this time

7. ISSUES OF LAW

None at this time

8. ANY REQUESTED AMENDMENTS TO PLEADINGS

None at this time

9. ADDITIONAL MATTERS

None at this time

10. PROBABLE LENGTH OF TRIAL

Ten Days

11. WITNESSES

A. Plaintiff's Witnesses

1. Nancy Buckley
138 Falconer Avenue
Brockton, MA 02301\\
508-586-7217

2. Joseph Bage, formerly of
221 Oak Street
Brockton, MA 02301

3. Robert Uto
222 Myrtle Street
Brockton, MA 02301
508-580-7463 - work
508-583-0693 - home

4. MaryBeth McManus
97 Boylston Street
Brockton, MA 02301
508-580-4366 - work
508-587-1298 - home

5. John Whiton
47 Gretter Road
Roslindale, MA 02131
508-580-7411 - work
617-327-2529 - home
6. Kathleen Sirois
71 Carroll Avenue
Brockton, MA 02301
508-580-7535 - work
508-584-4178 - home
7. Susan Szachowicz
36 Tucker Drive
Brockton, MA 02301
508-580-7633 - work
8. Michelle Finnegan
55 Quail Street
W. Roxbury, MA 02132
508-580-7463 - work
617-327-3789 - home
9. Deidre Smith
22 Meadow Lane
Bridgewater, MA 02324
508-580-7431 - work
508-697-6320 - home
10. Deborah Feldman
145 Cliffwood Lane
W. Falmouth, MA 02574
508-580-7406 - work
11. Jane Malatesta
29 Slocum Road
Jamaica Plain, MA 02130
617-524-3240 - home
12. Maria Lefort
2 Laurel Hill Court
Bourne, MA 02532
508-894-4536 - home

13. Thomas Malinowski
c/o Brockton Education Association
410 Forest Avenue
Brockton, MA 02301
14. Alan Jolly
47 Barden Hill Road
Middleboro, MA 02346
508-580-7431 - work
508-947-8834 - home
15. Linda O'Malley
16. Jean Ryan
97 Boylston Street
Brockton, MA 02301
508-894-4400 - work
508-587-1298
17. Barbara Souza (friend of the plaintiff)

B. Defendant's witnesses

The defendant incorporates the same list of "Plaintiff's Witnesses" listed in the Joint Pre-Trial Memorandum by the plaintiff.

12. EXHIBITS

A. Plaintiff's Exhibits

1. Plaintiff Deposition Exhibit 3
2. Plaintiff Deposition Exhibit 4
3. Plaintiff Deposition Exhibit 5
4. Plaintiff Deposition Exhibit 6
5. Plaintiff Deposition Exhibit 7

6. Plaintiff Deposition Exhibit 9
7. Plaintiff Deposition Exhibit 12
8. Plaintiff Deposition Exhibit 13
9. Plaintiff Deposition Exhibit 14
10. Plaintiff Deposition Exhibit 15
11. Plaintiff Deposition Exhibit 16
12. Plaintiff Deposition Exhibit 17
13. Plaintiff Deposition Exhibit 18
14. Plaintiff Deposition Exhibit 19
15. Plaintiff Deposition Exhibit 20
16. Plaintiff Deposition Exhibit 21
17. Plaintiff Deposition Exhibit 24
18. Plaintiff Deposition Exhibit 25
19. Plaintiff Deposition Exhibit 26
20. Defendant Deposition Exhibit 5
21. Defendant Deposition, Exhibit 6
22. Bage Deposition, Exhibit 4

Plaintiff reserves the right to supplement this list.

B. **Defendant's Exhibits**

1. Malatesta Deposition, Exhibit 1
2. Bage Deposition, Exhibit 2

3. Bage Deposition, Exhibit 3
4. Bage Deposition, Exhibit 4
5. Bage Deposition, Exhibit 5
6. Bage Deposition, Exhibit 6
7. Bage Deposition, Exhibit 7
8. Buckley Deposition, Exhibit 1
9. Buckley Deposition, Exhibit 2A
10. Buckley Deposition, Exhibit 2B
11. Buckley Deposition, Exhibit 2C
12. Buckley Deposition, Exhibit 2D
13. Buckley Deposition, Exhibit 2E
14. Buckley Deposition, Exhibit 2F
15. Buckley Deposition, Exhibit 3
16. Buckley Deposition, Exhibit 4
17. Buckley Deposition, Exhibit 5
18. Buckley Deposition, Exhibit 6
19. Buckley Deposition, Exhibit 7
20. **EXHIBIT 20**
INTERVIEW RATING SHEETS BY:
 - a. Maria LeFort
 - b. Jane Malatesta
 - c. Kathleen Sirois

- d. Deborah Feldman
 - e. John Whitman
 - f. Deirdre Smith
21. **EXHIBIT 21**
Resume of Alan Jolly
22. **EXHIBIT 22**
Resume of Joseph Bage
23. **EXHIBIT 23**
INTERVIEW RATING SHEETS FOR:
- a. Nancy Buckley - 2004
 - b. Sharon Wolder - 2004
 - c. Alan Jolly - 2004
24. **EXHIBIT 24**
RANKINGS – 2004
25. **EXHIBIT 25**
Interview Rating Sheet for Nancy Buckley – 2006
26. **EXHIBIT 26**
Brockton High School Organization Chart, 2004-2005
27. **EXHIBIT 27**
Coordinator of Library and Media Services, Posting
28. **EXHIBIT 28**
Brockton High School Section G – Personnel
29. **EXHIBIT 29**
Alan Jolly - Personnel File
30. **EXHIBIT 30**
Nancy Buckley - Personnel File

31. **EXHIBIT 31**
Agreement between The Brockton School Committee
and The Brockton Education Association
9/1/02 – 8/31/05
32. **EXHIBIT 32**
Plaintiff's Answers to Interrogatories
33. **EXHIBIT 33**
Plaintiff's Rule 36 Responses

Defendant reserves the right to supplement this list.

Respectfully submitted,

The Plaintiff,
By her Attorneys



Kevin G. Powers, BBO #405020
Linda Evans, BBO #635078
Rodgers, Powers & Schwartz, LLP
18 Tremont Street
Boston, MA 02108
(617) 742-7010

The Defendant
By Its Attorney



Frank A. Smith III, BBO #467500
Frank A. Smith III & Associates, P.C.
11 Beacon Street, Suite 1200
Boston, MA 02108
(617) 723-3273